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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 152 of 2014**

- Devsingh Rathiya S/o Amar Singh Rathiya Aged About 67 Years R/o Malpani, Batoorakachhar, Thana and Tah. Gharghoda, Distt. Raigarh C.G.

---- Appellant**Versus**

1. Mahesh Ram S/o Shri Mahadev Kumar Aged About 47 Years by casted Kumhar R/o Malpani, Batoorakachhar, Thana and Tah. Gharghoda, Distt. Raigarh C.G.
2. Bhuwan Lal S/o Shanker Rathiya Aged About 20 Years R/o village Malpani, Batoorakachhar, Thana and Tahsil Gharghoda, Distt. Raigarh C.G.
3. The New India Insurance CompanyLtd. Branch Office, Sattigudi Chowk, Raigarh, Tah. And Distt. Raigarh C.G.

---- Respondents

For Appellant	Shri Sunil Sahu, Advocate.
For Respondent Nos. 1 & 2	Shri Waquar Naiyer, Advocate on behalf of Shri Ashutosh Mishra, Advocate.
For Respondent No.3	Shri Qamrul Aziz, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

05/04/2019

This appeal is by the owner of the offending vehicle/non-applicant no.2 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 06.11.2013 passed by 1st Additional Motor Accident Claims Tribunal, Raigarh, C.G. in Claim Case No.131/2011 awarding total compensation of Rs.3,43,000/- with interest @ 6% per annum from the date of award till realization, fastening liability on non-applicant No.1 & 2 while exonerating Insurance Company/non-applicant no.3 on the

ground of breach of policy conditions.

02. As per claim petition, on 15.11.2010 due to rash and negligent driving of Tractor bearing No. CG13-D-1135 attached with trolley bearing No. CG13 D 1136 by non-applicant No.1 Bhuvan Lal, the said vehicle turned turtle and as a result of which Bhagvati Bai, who was sitting in the trolley sustained grievous injuries on her body and died on the spot. At the time of accident, the deceased was 45 years of age, earning Rs.4,500/- per month from labour work. At the relevant time, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimant i.e. husband of the deceased, under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.14,75,000/-, the Tribunal considering the evidence led by the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant submits that the Tribunal has wrongly exonerated Insurance Company. In this case, Insurance Company has covered risk of 6 persons travelling in the tractor as per Ex.D-1, therefore, liability should be fastened upon Insurance Company. He also submits that the income of the deceased considered by the Tribunal is on higher side and needs to be reduced suitably.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

06. Learned counsel for the claimant opposes the contention made by the appellant's counsel so far as it relates to the income of the deceased.

07. Heard learned counsel for the parties and perused the material available on record.

08. It is not in dispute that the offending vehicle is a Tractor bearing No. CG13-D-1135 attached with trolley bearing No. CG13-D-1136 are registered only for agricultural purposes vide Ex.P-5 and Ex.P-6 and the tractor has the sitting capacity of one person i.e. for driver only whereas the trolley has no sitting capacity. As per Ex.P-7, the offending vehicle-tractor was duly insured with non-applicant no.3. As per Ex.P-1 i.e. the final inquiry report prepared by the police, on the date of accident as many as 34 persons were travelling in the offending vehicle and due to rash and negligent driving by the non-applicant no.1/driver, the vehicle turned turtle, as a result of which the deceased Bhagvati Bai suffered grievous injuries and died on the spot. The aforesaid document of Ex.P-1 has been duly proved by AW-1 Maheshram. So far as argument of learned counsel for the appellant that as per Insurance Policy premium of 6 passengers were taken by the Insurance Company, NAW-1 Himanshu, Administrative Officer of the Insurance Company has categorically stated in his evidence that the Tractor has only one sitting capacity i.e. for driver. In his cross-examination, he has clarified that due to typographical error in the Insurance Policy Ex.D-1 against the number of passenger excluding the driver 6 has been mentioned whereas no premium for such passengers were taken by the Insurance Company. From perusal of the Insurance Policy of Ex.P-7 which is a

Standard Commercial Vehicle Package Policy, it is evident that OD premium of Rs.3098, third party premium of Rs.1375 with service tax of Rs.461 i.e. total premium of Rs.4934 was taken by the Insurance Company and no premium for carrying passenger in the agricultural tractor was received by the Insurance Company.

09. In the matter of ***Shivraj Vs. Rajendra and another, (2018) 10 SCC 432***, where tractor was insured only for agricultural purposes having capacity to accommodate only one person i.e. driver and the appellant was travelling in it as a passenger, it was held by the Hon'ble Supreme Court that the vehicle being driven in violation of policy conditions, the insurance company was not liable for the loss or injuries suffered by the appellant or to indemnify owner of the tractor.

In the instant case, in view of the oral and documentary evidence on record including the insurance policy, it is evident that on the date of accident, the offending vehicle was being driven by non-applicant no.1 in contravention of the terms and conditions of the Insurance Policy, no evidence in rebuttal of the same has been adduced by the non-applicants no. 1 & 2, therefore, keeping in view the decision of Hon'ble Supreme Court in the matter of Shivraj (supra), this Court is of the opinion that the Tribunal was justified in fastening liability on the non-applicant nos. 1 & 2 and exonerated the Insurance Company/non-applicant no.3.

10. As regards the income of the deceased challenged by the appellant/owner. Though, the claimant pleaded that the deceased was earning Rs.4,500/- per month through labour work, however, no

satisfactory evidence could be adduced by him and, therefore, the Tribunal keeping in view the minimum wages prevalent at the time, assessed the income of the deceased as Rs.36,000/- per annum on notional basis, considering the fact that the accident occurred in the year 2010, the age of the deceased and the minimum wages at the relevant time, this Court is of the opinion that the income of Rs.36,000/- per annum assessed by the Tribunal on notional basis cannot be faulted with. Therefore, the argument advanced by the appellant/owner in this regard being without substance is hereby rejected.

11. In the result, the appeal filed by the owner of the vehicle being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh